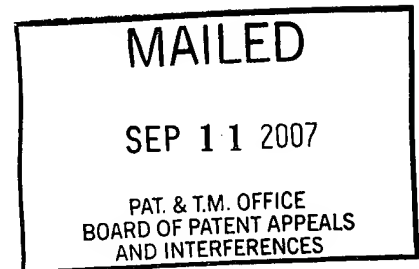


1 RECORD OF ORAL HEARING  
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3 UNITED STATES PATENT AND TRADEMARK OFFICE  
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6 BEFORE THE BOARD OF PATENT APPEALS  
7 AND INTERFERENCES  
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10 Ex parte RICHARD HAYTON and DAVID HALLS  
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12  
13 Appeal 2007-1646  
14 Application 09/704,896  
15 Technology Center 2100  
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18 Oral Hearing Held: August 8, 2007  
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22 Before JOSEPH L. DIXON, HOWARD B. BLANKENSHIP, and  
23 ST. JOHN COURTENAY III, Administrative Patent Judges  
24

25 ON BEHALF OF THE APPELLANTS:  
26

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35 The above-entitled matter came on for hearing on Wednesday, August  
36 8, 2007, commencing at 9:31 a.m., at the U.S. Patent and Trademark Office,  
37 600 Dulany Street, Courtroom B, Alexandria, Virginia, before Jennifer M.  
38 O'Connor, court reporter.

1 JUDGE DIXON: We'd like to welcome you to the board. Have you  
2 been here before? Okay, you have 20 minutes. If we interrupt you with  
3 questions, we'll extend your time accordingly.

4 MR. LANZA: Good morning. We're here to ask the board to remand  
5 the rejection of the claims in this case back to the examiner because we  
6 believe the obviousness rejection that's been opposed against the claims is  
7 invalid and not proper.

8 The examiner has rejected the infinite claims of this case under two  
9 references, Nazem and Jeyeraman. The independent claims of this case all  
10 deal with methods, clients and servers for updating dynamic portions of a  
11 Web page. What is meant by dynamic portions of a Web page is defined in  
12 the spec as elements of the Web page that are different from the content that  
13 resides in that Web page.

14 JUDGE DIXON: What page are you referring to?

15 MR. LANZA: I'm sorry?

16 JUDGE DIXON: What page in the specification?

17 MR. LANZA: Figure 5B is the best example of what we mean by  
18 that. It's an example of something called span tags, which are included in  
19 the HTML code for the dynamic pages, that identifies a structural element as  
20 opposed to the table of elements that are in the table.

21 We're asking the board to remand for two reasons. We believe that  
22 the obviousness rejection is improper because there is no motivation to  
23 combine the two references, but also because even if combined, those two  
24 references lack this concept of a dynamic portion which we recite in both of  
25 our independent claims.

1 JUDGE DIXON: But if you have the position that the rejection is in  
2 error, you'd rather us remand it to the examiner and look at it again without  
3 any findings from us, or reverse?

4 MR. LANZA: I'm asking you to reverse the rejection. I apologize. If  
5 it pleases Your Honors, I'll talk about the motivation to combine the portion  
6 of the rejection first because that will allow me to talk a little bit about the  
7 prior art.

8 The two references that have been asserted against these claims,  
9 Nazem and Jeyeraman, Nazem is a case that is basically directed to Yahoo  
10 pages. In effect, there's a server. The server has a user template that is  
11 associated with various users of the Yahoo Web site. Those templates are  
12 filled with content which is updated by the server.

13 Nazem talks about having the server do the updating so the server has  
14 access to a number of live data peaks like stock quotes and sports scores.  
15 Nazem is directed to having the server do all that work and then push the  
16 entire page down to the client. Makes sense because the client's browser is  
17 generally dumb and you don't want the client doing any processing and the  
18 client probably can't do any processing.

19 That is in pretty stark contrast to Jeyeraman, which is a patent that is  
20 issued to Sun. Appears to be directed to a document object model for Web  
21 pages. Jeyeraman talks a lot about heavy tree structure, which identifies  
22 content that is in a Web page, and discusses the fact that by having the  
23 client -- since the client is pretty smart in Jeyeraman's system, the server is  
24 able to reduce the band width necessary to transmit changes to the client by  
25 sending a set of commands that represent actions that the client is to take on  
26 the nodes in a tree structure.

1 I will admit that it's not -- patent which Jeyeraman is somewhat tough  
2 sliding, but in column 13, lines 32 through 49, there is a list of commands  
3 which represent the ultimate output of the server in the Jeyeraman system.

4 It's our position that there's no motivation to combine these two  
5 references, although KSR has changed some aspects of the test for  
6 obviousness. I believe that it did not touch sort of a fundamental precept,  
7 which is if the proposed combination would require that you change the  
8 principle of operation of the prior art, then that's an improper combination.

9 Here you have two references that really are pulling in very different  
10 directions. Jeyeraman is all about having a smart client and sending only  
11 commands over the network so that you minimize the amount of band width  
12 that's consumed. Nazem has a very dumb client, expects the server to do all  
13 of the work and push the entire page down each time there's an update to the  
14 client. Combining those two just simply wouldn't work.

15 Even if one were to combine those two references however, it's also  
16 our position that there is no concept of dynamic portions in either one of  
17 these references. I talked a little bit about the fact that throughout the  
18 specification we talk about dynamic portions which are made up of an  
19 element that has content that gets put into it and figure 5B has an example of  
20 the span i.d.s in it.

21 Both Nazem and Jeyeraman talk about content. The examiner relies  
22 on Jeyeraman for the concept that a modification list might be sent over with  
23 commands indicating what you do to portions of the Web page. He's  
24 bringing that up in relation to an argument that we have that all of our  
25 independent claims require this dynamic portion and in one step we send  
26 over a modification list -- that's also shown in 5B on the right-hand side of

1 the figure -- the modification list which tells the client what should be done  
2 to the dynamic portions and which of the old dynamic portions should be  
3 replaced by the new dynamic portion that the server has generated. But  
4 Jeyeraman is talking about actions that are done to data that's in the Web  
5 page and not to structure and not to the table itself.

6 Even if combined the references would lack this concept of a dynamic  
7 portion or receiving a page including dynamic portions, which is how it's  
8 recited in the client claim, which I believe is claim 11. Since each reference  
9 on its own lacks that element, the combination would similarly lack the  
10 element. We believe that the rejection of the claims over this combination,  
11 even if made, is improper because it fails to have one of the elements.

12 JUDGE COURTENEY: What is the portion of your specification  
13 where you provide support for the cited dynamic portions?

14 MR. LANZA: We talk about it throughout the specification. Figure  
15 5B is the best place where in sort of one encapsulated place we talk about  
16 and we show what we mean. I'm sorry, I'm just getting into the  
17 specification. There are other sections of the specification where we talk  
18 about the difference. Page 11, section 1.1, we're talking about  
19 correspondences between these code fragments, which are included in the  
20 page that gets sent down to the client, and the corresponding data upon  
21 which the code fragments depend. Then the next sentence says, in other  
22 words, the data 50 upon which the code fragments depend 265. Then there's  
23 a depend in there which is improper—is the data 50 that the code fragment  
24 265 uses to generate the corresponding page portion.

25 There is a difference between portions of the page and data. There's  
26 also a sentence on page 13 where we talk about another embodiment of the

1 invention using code fragments that uses a processed generating output -- for  
2 example, HTML code -- that defines one or more page portions of the Web  
3 page.

4 JUDGE COURTENEY: Could you give me the line number that  
5 you're citing?

6 MR. LANZA: I'm sorry, on page 11, it is lines 14 through 16. On  
7 page 13, it's 14 and 15.

8 JUDGE COURTENEY: Thank you.

9 MR. LANZA: Also 5B, figure 5B is, as I've said, an encapsulated  
10 form where it shows the span i.d. tags identifying the tables and then shows  
11 generation of the modification list, which is also a required element of each  
12 of our independent claims.

13 JUDGE DIXON: Any further questions?

14 JUDGE COURTENEY: Do you have a closing statement that you'd  
15 like to make?

16 MR. LANZA: I would ask that the board reverse the rejection of the  
17 claims.

18 JUDGE DIXON: Thank you very much.

19 JUDGE COURTENEY: Thank you.

20 (Whereupon, at 9:40 a.m., the hearing was adjourned.)  
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